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troversy with Lord DERBY over the Winslow case. At least, citations to all the materials of the controversy should have been made. Mr. HAWLEY confines himself to the citation of cases and the article by Judge COOLEY. It is evident, however, that Mr. Justice MILLER's mind, from what he says in his opinion, page 429, was much more influenced by the able articles of Mr. LAWRENCE and of Judge LOWELL than he was by anything found in reported cases. In short, our criticism of the work would be that Mr. HAWLEY might have written an exhaustive and able monograph or critical discussion on international extradition, collecting all the data on the subject. What he has done is to give a concise statement of the leading principles of the law of extradition as interpreted by the courts of the United States, with a clear statement of the history of the conflict between different principles. Yet the book in its present shape is of great interest and use to the profession, and we take great pleasure in recommending it to our readers.

W. D. L.

THE RAILROADS AND THE COMMERCE CLAUSE. By FRANCIS COPE HARTSHORNE, Member of the Philadelphia Bar. University of Pennsylvania Press, 1892. Pp. 165.

It is rare that a writer can find a subject at once so new and so important as this: it is rarer still that he can treat it in a manner so satisfactory. The power of Congress over the railroads has been extremely ill-defined. It rests largely on a clause in the Constitution framed before railroads were invented, and requiring deeper analysis than most judges have felt themselves ready to give. State commerce and interstate commerce are so linked that it is almost impossible to regulate either one effectively without a good deal of incidental regulation of the other. The author recognizes this fact, and holds that the constitutional power to regulate commerce between the States carries with it the power to regulate State commerce, so far as this is a necessary means to that end. The number of decisions which can be alleged in support of this view is not as yet very large; but we imagine that they will grow more numerous in the immediate future. The line of reasoning adopted by the author seems cogent; it certainly has the merit of reducing to a system the definition of rights which have hitherto been chaotic and conflicting.

If Congress uses the powers which the author attributes to it, there will be little room for State regulation of rates; for each rate forms part of a general system, and it is usually impossible to touch one without affecting a hundred others. What, then, it may be asked, is left to the States? The author believes that their action would be confined to the sphere of police regulation, and within that sphere he thinks they would have large room to act. We do not believe that the distinction can be drawn as clearly as Mr. HARTSHORNE supposes. There is about as much intermixture of State and interstate matters in police regulation as in rate regulation. Mr. HARTSHORNE apparently holds (97, 98) that a State may prescribe the use of a *particular* automatic coupler. Suppose two adjacent States prescribe different couplers, each good for the purpose in

view, but neither of them coupling well with the other. It is obvious that regulations of this kind—of which a few years ago there was some danger—would amount in many cases not merely to a regulation, but to a prohibition of interstate commerce. While each law might be proper enough in itself, the combination of the two would be inadmissible. A similar point might be made with regard to much of the tax law of different States. The difficulty is often not so much connected with the inherent wrongness of State tax laws as with the possibilities of conflict and interference; and the same line of analysis which Mr. HARTSHORNE applies to rate regulation might, perhaps, have been extended with equal pertinence to taxation.

If Congress does not use the power which it possesses, there is more room left for the action of the State legislatures, with all the dangers that such action involves. Nor is the common law protection against such danger as effective as most people think. The author is right in saying that the remedy must, in the majority of cases, be political rather than judicial. But we think that he fails to appreciate the many cases in which this political remedy can be applied; and, in particular, the legitimate work of railroad commissions. He thinks of a commission as a poor kind of court. If a commission tries to be a court, it is undoubtedly a poor kind of court. The best commissions, like those of Massachusetts twenty years ago, or Iowa ten years ago, have not tried to be courts at all. Their work has been educational rather than judicial. They have not been adjudicating between parties hostile in interest, but have been protecting the common permanent interest of both parties against the momentary interest of one side or the other. Their business has been to prevent fights, not to settle them. It was in some respects a misfortune that the Interstate Commerce Commission was composed wholly of lawyers, for they were led to attribute a judicial character to their work which has interfered with its success. What Mr. HARTSHORNE regards as "the evident purpose" of the establishment of the commission—the establishment of consistency and uniformity of policy—we believe to have been chiefly an afterthought of the commissioners themselves, and not a wholly fortunate one at that. We agree with Mr. HARTSHORNE in not liking the present status of the commission, but we should seek a remedy in the opposite direction from his. We would not make it more of a court, but less of one. The commissions whose real power was greatest have been those whose appearance of judicial authority was least. Bodies of the type suggested by Mr. HARTSHORNE have enjoyed, as a rule, small measure of success. Let us have courts for the adjudication of disputes, commissions for their prevention; and let us not imperil the success of the commission in the latter function by encouraging it to assume the former.

ARTHUR T. HADLEY.

INTERNATIONAL COURTS OF ARBITRATION. By THOMAS BALCH.
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It is with especial interest that we call attention in our columns to the above work, which treats of a subject which is now attracting the